KERR-McGEE CORP.

IBLA 93-162 Decided March 27, 1996

Appeal from a decision of the Associate Director for Management and Budget, Minerals Management Service, denying appeal of erroneous reporting assessment. MMS-90-0323-OCS.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Assessments--Oil and Gas Leases: Civil Assessments and Penalties

   Assessments levied pursuant to 30 CFR 218.40 are in the nature of liquidated damages imposed to compensate MMS for noncompliance with reporting requirements that directly results in added costs and expenses to MMS.

APPEARANCES: Marilyn Young, Esq., Law Department, Kerr-McGee Corporation, Oklahoma City, Oklahoma; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Kerr-McGee Corporation has appealed from a September 28, 1992, decision of the Associate Director for Management and Budget, Minerals Management Service (MMS), denying its appeal from an assessment of $6,740 for erroneous reporting of 804 line items on the form MMS-2014 (Report of Sales and Royalties Remittance) appellant submitted for March 1990. To facilitate computerized processing of production data, lessees must list various transactions as line item entries with several columns of information per line item. Lessees categorize entries with numeric codes such as transaction codes (TC's) and adjustment reason codes (ARC's). 1/ Appellant's errors primarily resulted from use of improper TC's and from use of ARC's inappropriate for the TC entered by appellant.

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1/ Instructions for proper use of these codes are contained in the MMS Oil and Gas Payor Handbook.

Departmental regulation 30 CFR 218.40(b) provides for assessment of an amount not to exceed $10 for each incorrectly completed report. Subsection (c) defines a report as "each line item on a Form MMS-2014." Subsection (e) provides periodic adjustment of the assessment amount, based on MMS' experience with costs and improper reporting. MMS published a Federal Register notice establishing an assessment of $5 per line for up to 100 lines in error; $8 per line for 101 to 500 lines in error; and $10 for each line over 500. 54 FR 47838 (Nov. 17, 1989). The notice also provided for a reduction to $3 per line "for erroneous lines caused by a header error, or for erroneous lines caused by the same error which is repeated on every line of a royalty report." This November 1989 notice superseded a notice published at 52 FR 27593 (July 22, 1987) which we have sustained either by affirming MMS decisions applying its requirements or remanding cases with instructions to do so. See Linmar Petroleum Co., 123 IBLA 45 (1992); ANR Production Co., 118 IBLA 338, 342 (1991); Phillips Petroleum Co., 116 IBLA 152, 156 (1990); Conoco, Inc. (On Reconsideration), 113 IBLA 243, 248 (1990); Exxon Company, U.S.A., 113 IBLA 199 (1990); Forest Oil Corp., 107 IBLA 1 (1989).

[1] Appellant states that MMS did not make public any cost analysis to justify its rates and contends failure to include this information in the rulemaking notice fails to comply with the procedural requirements of the Administrative Procedure Act (APA), 5 U.S.C. § 553 (1994), citing Home Box Office, Inc. v. F.C.C., 567 F.2d 9, 35 (D.C. Cir. 1977), in which the court referred to the APA's requirement that the notice provide "a concise general statement of [the] basis and purpose" of the rule. Appellant has cited no authority analogous to the facts presented in this case persuading us that MMS has fallen short of the general standard to which appellant refers.

The decision below provided a cogent explanation of the need for imposition of assessments. The decision states that there are more than 24,000 producing Federal and Indian oil and gas leases and more than 450 solid mineral leases, making computerized data collection and accurately reported data from lessees essential (Decision at 6-7). Correction of errors leading to computer rejection of reports involves 12 steps that require expenses for labor, space, communications, equipment, supplies, overhead, computer time, and mailing (Decision at 3-4). MMS estimates the direct cost of labor alone as more than $600,000, which exceeds the $10 per line rate for the approximately 56,000 erroneously reported lines (Decision at 4). Although appellant views this figure as excessive, 33 MMS employees spend an average of 42 percent of their time solely on the correction of reporting errors, and when added to time spent on error correction by contract labor, the total labor costs exceed $600,000 and do not include other direct or indirect expenses. Id.

Appellant contends that its assessment should be lowered further because 766 of the errors were repetitive and should have been assessed at $3. The MMS notice, however, applies the $3 rate only when the error is repeated on every line of a report. 54 FR 47838 (Nov. 17, 1989). When

a computer rejects reports because the same error is repeated on every line, the error is easier to correct than when the error is not repeated
on every line. MMS explains:

> When reports contain a variety of errors, any savings is lost because the MMS employee must review each line to determine what correction must be made. Additionally, each error must be corrected individually and when all errors are not the same, the corrective action likewise is not always the same. Thus the MMS employee making the correction is required to determine in each instance what changes must be made.

(Answer at 5-6). Appellant was properly assessed at the higher rates.

Appellant notes that in fiscal year 1990, MMS assessed a total of $35,000 of which $6,740 was assessed to appellant. Appellant considers it is being unfairly penalized for "inefficiencies of the system" and mistakes of other payors who were not assessed. MMS' decision explains that this results from its policy of not beginning the assessment process until a payor's error rate exceeds 5 percent in a specific reporting month at which time a warning letter is issued but no assessment is made. An assessment is made only if the payor's error rate again exceeds 5 percent during the following 6 months (Decision at 5).

MMS had already notified appellant by letter dated January 2, 1990, of excessive errors in its October 1989 Form MMS-2014, but levied no assessment. It was not until appellant submitted its March 1990 report with excessive errors that MMS issued a May 9, 1990, decision that was affirmed in the decision from which this appeal was taken. Having already taken full advantage of the considerable leeway MMS affords payors who submitted erroneous reports before its assessment was levied, appellant is in no position to claim unfair treatment in relation to those whose error rates remained below the threshold. Appellant has incurred no liability that it could not have avoided.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Will A. Irwin
Administrative Judge

I concur:

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Franklin D. Arness
Administrative Judge